No. 25-320

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF ALASKA, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

JOINT BRIEF IN OPPOSITION

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RULE 29.6 DISCLOSURE STATEMENT

Respondent Kuskokwim River Inter-Tribal Fish Commission is an inter-Tribal consortium representing the federally recognized Tribes of Kuskokwim River watershed; Respondents Association of Village Council Presidents and Alaska Federation of Natives are nonprofit corporations; Respondent Ahtna Tene Nené is an unincorporated association; and Respondent Ahtna, Incorporated, is an Alaska Native Regional Corporation formed pursuant to the Alaska Native Claims Settlement Act. Respondents do not have parent corporations, and no publicly held corporations own ten percent or more of Respondents' stock.

QUESTIONS PRESENTED

The Ninth Circuit has long held, in a series of cases known as the *Katie John* Trilogy, that "public lands" as used in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA)—which mandates protection of subsistence fishing—extends to navigable waters. In *Sturgeon* v. *Frost*, this Court held that the term "public lands" as used in Title I of ANILCA does not encompass navigable waters. While litigating *Sturgeon*, Alaska told this Court that it "need not and should not overrule *Katie John*" because those cases were correctly decided, as the term "public lands" carries a different meaning in the different titles of ANILCA. Citing Alaska's brief, this Court in turn stated that "[Title VIII]'s subsistence-fishing provisions … are not at issue in this case, and we therefore do not disturb the Ninth Circuit's holdings that the [federal government] may regulate subsistence fishing on navigable waters."

The questions presented are:

Whether issue preclusion and judicial estoppel prevent Alaska from relitigating the *Katie John* Trilogy.

Whether the Ninth Circuit correctly held that *Sturgeon* did not overrule the *Katie John* Trilogy.

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INTRODUCTION

This case involves settled expectations and settled law that impact subsistence fishing rights in Alaska and only in Alaska. In the decision below, the Ninth Circuit held that this Court's decision in *Sturgeon* v. *Frost*, 587 U.S. 28 (2019), did not overrule the so-called *Katie John* Trilogy.[1] That was hardly a surprise, as this Court in *Sturgeon* accepted Alaska's own invitation to leave that Trilogy undisturbed. Alaska nonetheless now asks this Court to review the Ninth Circuit's decision, claiming that it conflicts with *Sturgeon* and threatens Alaska's sovereignty. But there is no threat to sovereignty here: Alaska specifically conceded below that Congress has sufficient authority over navigable waters to enact a rural subsistence priority to fish. And there is no conflict between *Katie John* and *Sturgeon* thanks, in part, to Alaska, which told this Court in *Sturgeon* that the Court "need not and should not overrule *Katie John*" because those cases were correctly decided, as the term "public lands" carries a different meaning in the different titles of the Alaska National Interest Lands Conservation Act (ANILCA), which is the only real issue in the cases. Br. of Amicus Curiae State of Alaska in Support of Pet'r (Alaska Amicus) at 29–35, *Sturgeon*, 587 U.S. 28 (No. 17-949), 2018 WL 4063284, at *29–35.

This Court took those representations to heart in *Sturgeon*. Citing Alaska's amicus brief, this Court

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[1] *Alaska* v. *Babbitt (Katie John I)*, 72 F.3d 698 (9th Cir. 1995), *cert. denied*, 517 U.S. 1187 (1996), and *cert. denied sub nom.*, *Alaska Fed'n of Natives* v. *United States*, 517 U.S. 1187 (1996); *John* v. *United States (Katie John II)*, 247 F.3d 1032 (9th Cir. 2001) (en banc) (per curiam); *John* v. *United States (Katie John III)*, 720 F.3d 1214 (9th Cir. 2013), *cert denied sub nom.*, *Alaska* v. *Jewell*, 572 U.S. 1042 (2014).

stated: "[Title VIII]'s subsistence-fishing provisions … are not at issue in this case, and we therefore do not disturb the Ninth Circuit's holdings [in *Katie John*] that the Park Service may regulate subsistence fishing on navigable waters." *Sturgeon*, 587 U.S. at 45 n.2. Plainly, the Ninth Circuit's holding here—that *Sturgeon* did not overrule *Katie John*—is correct. Indeed, that is doubly true, as *Sturgeon* and *Katie John* are readily harmonized. Title VIII of ANILCA mandates protection of subsistence *fishing*—which cannot be achieved unless Title VIII "public lands" include navigable waters where such fishing occurs—while Title I contains no similar mandate or focus on fishing. See Pet.App.4a, 28a–38a. And Congress has, through legislation, approved *Katie John*'s definition of "public lands" for purposes of Title VIII. See Pet.App.33a–38a.

Now the State disavows its prior representations, claiming a conflict this Court avoided at Alaska's own suggestion. That about-face comes not only with ill grace, but with substantial procedural hurdles. These same parties previously litigated to finality (including this Court's denial of certiorari) the very question presented here. Respondents thus argued below that Alaska's arguments here are barred, *inter alia*, by issue preclusion and judicial estoppel. While the Ninth Circuit did not need to reach those issues, Alaska cannot prevail without this Court needing to address those case-specific (and non-certworthy) obstacles. There is no getting around it: Alaska has already had more than one go at *Katie John*—and lost every time. What is more, Alaska prevailed in *Sturgeon* based on its arguments *differentiating* the meaning of "public lands" in Title I and Title VIII. These threshold problems are unavoidable obstacles to the Court reaching the question Alaska now says it wants decided.

Even beyond those serious obstacles, there is no reason to disturb what has long been settled. The State offers no valid reason to revisit an interpretation of Title VIII that was settled in court and has become an accepted feature of life—and law—in Alaska for decades. Instead, it attempts to repackage decades-old arguments to advance the theory that Congress enacted a self-defeating statute. The explicit purpose of Title VIII was to protect traditional and customary subsistence fishing. The vast majority of that fishing has always taken place in navigable waters. Overruling *Katie John*, as Alaska now asks this Court to do, would thus defeat Congress's intent and threaten a way of life that Alaska Natives have practiced for millennia.

Furthermore, protecting subsistence fishing for rural Alaskans—a protection Alaska expressly requested from Congress and expressly endorsed in *Sturgeon*—is plainly within Congress's authority and does not undermine any fundamental attribute of state sovereignty. In fact, ANILCA preserved an avenue for exclusive state regulation of hunting and fishing in Alaska. While Alaska ran into its own state-law obstacles to pursuing that course, that hardly means Congress intruded on Alaska's sovereignty. Moreover, Title VIII of ANILCA expressly preserves Alaska's power to regulate hunting and fishing, including subsistence hunting and fishing, except in the few instances where it is found expressly to conflict with federal regulation under Title VIII.

This case is an extraordinarily poor candidate for this Court's review. There is no conflict between the decision below and any Supreme Court case. This dispute affects only this Alaska-specific statute and an interpretation of the phrase "public lands" in a unique context. And the current administration has already

begun considering amending the regulations that triggered this retread lawsuit. Alaska cannot create its own conflict by changing its view of the *Katie John* Trilogy. Its change of position creates serious vehicle problems.

The petition should be denied.

STATEMENT

Legal Background

1. Alaska Natives, as the land's original occupants, held aboriginal title to the lands that are now Alaska, which included the right to hunt, fish, and gather on those lands and waters. See *Edwardsen* v. *Morton*, 369 F. Supp. 1359, 1363, 1373 (D.D.C. 1973); *Mitchel* v. *United States*, 34 U.S. 711, 746 (1835). For centuries, Alaska Natives "sustained themselves by fishing, hunting, and trapping" on their lands. *Edwardsen*, 369 F. Supp. 3d at 1363. Subsistence fishing was and continues to be "not much less necessary to the existence" of these tribes "than the atmosphere they breathe[]." *United States* v. *Winans*, 198 U.S. 371, 381 (1905); see also *Williams* v. *Babbitt*, 115 F.3d 657, 664 (9th Cir. 1997) (Subsistence fishing "is an integral and time-honored part of native subsistence culture[]" and is "'intricately woven into the fabric of native social, psychological, and religious life.'" (internal citation, brackets omitted)).

Those rights, including the right to engage in subsistence fishing, were largely left intact by Russia, which originally claimed Alaska as a territory and later sold its interests to the United States. See Treaty Concerning the Cession of the Russian Possessions in North America, 15 Stat. 539 (1867). Congress also generally declined to disturb Alaska Natives' right to possess and make use of their lands. See Organic Act

of May 17, 1884, § 8, 23 Stat. 24, 26 (1884); Act of June 6, 1900, § 27, 31 Stat. 321, 330 (1900); see also *Cohen's Handbook of Federal Indian Law* § 1302.01[2][a], at 840 (Nell Jessup Newton & Kevin K. Washburn eds., 2024) (*Cohen's Handbook*).

For instance, in the Alaska Statehood Act of 1958, Pub. L. No. 85-508, 72 Stat. 339 (1958), the State did not receive exclusive or plenary authority over navigable waters or fishing rights in those waters. Instead, the Statehood Act recognized the United States' continuing responsibility to protect Alaska Natives' subsistence fishing rights. Accordingly, Section 4 required the State to forever disclaim all "right and title … to any lands or other property (*including fishing rights*), the right or title to which may be held by any Indians, Eskimos, or Aleuts … or is held by the United States in trust for said natives." *Id.* § 4, 72 Stat. at 339 (emphasis added). And in the Alaska Constitution, the State "disclaim[ed] all right and title in or to any property belonging to the United States," and "all right or title in or to any property, *including fishing rights*, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof." ALASKA CONST. art. XII, § 12 (emphasis added).

The Statehood Act did not "determine the rights of the Alaska Natives, who asserted aboriginal title to much of the same land now claimed by the State." *Sturgeon* v. *Frost* (*Sturgeon I*), 577 U.S. 424, 429 (2016). Soon after entering the Union, however, the State's land-selection efforts began intruding on traditional Alaska Native hunting and fishing grounds. See *Alaska* v. *Udall*, 420 U.S. 938, 940 (9th Cir. 1969); *Cohen's Handbook* § 13.01[2][a], at 840. The State also began asserting management over hunting and fishing, quickly closing traditional Alaska Native subsist-

ence fisheries. *Katie John I*, 72 F.3d at 700. The discovery of oil at Prudhoe Bay in 1968 further intensified the State's demands. See *Cohen's Handbook* § 13.01[2][b], at 840–41.

After years of negotiation among Alaska Natives, the State, and the federal government, a grand compromise was reached: Congress enacted the Alaska Native Claims Settlement Act (ANCSA) in 1971. Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified as amended at 43 U.S.C. §§ 1601 *et seq.*). Although the 229 federally recognized Tribes in Alaska are on the same legal footing as the Tribes in the Lower 48, ANCSA was "a novel and experimental approach in the settlement of Native claims." David Case & David Voluck, *Alaska Natives and American Laws* 179 (3d ed. 2012); see also *id.* at 34. ANCSA provided for the creation of state-chartered Alaska Native corporations to select approximately 40 million acres of land and receive $960 million in federal funds. *Sturgeon*, 577 U.S. at 430.

In enacting ANCSA, Congress considered expressly including Native subsistence provisions. "[A]fter careful consideration," however, the conference committee stated its belief "that all Native interests in subsistence resource lands can and will be protected" by the Secretary of the Interior and the State. H.R. Rep. No. 92-746, at 37 (1971) (Conf. Rep.). Congress made clear that it "expect[ed] both the Secretary and the State to take any action necessary to protect the subsistence needs of [Alaska] Natives." *Id.*

Despite ANCSA, the State continued to restrict the subsistence hunting and fishing activities of Alaska Natives, further compromising Natives' food security in the name of benefitting the urban, non-Native population who wished to hunt and fish, primarily for

sport. See 2 C.A. JSER 353; see also 125 Cong. Rec. 9,904 (1979) (statement of Rep. Udall). That led Congress to realize that it needed "to fulfill the policies and purposes of [ANCSA]," 16 U.S.C. § 3111(4), and "ma[k]e good on [its] promise" to protect Alaska Native subsistence from the State. 126 Cong. Rec. 29,278 (1980) (statement of Rep. Udall).

2. In 1980, Congress fulfilled its promise to protect Native subsistence through Title VIII of ANILCA, which gives priority to customary and traditional subsistence uses of fish and wildlife by rural residents on "public lands." 16 U.S.C. § 3114. Congress made clear that the federal government was authorized to adopt rules for the conservation of "waters," "freeflowing rivers," and "fish" within those lands. *Id.* § 3101(a)–(c).

Notably, "[e]arly drafts of Title VIII protected only subsistence uses by [Alaska Natives]." *Kenaitze Indian Tribe* v. *Alaska*, 860 F.2d 312, 313 n.1 (9th Cir. 1988). But "[w]hen the State advised Congress that the Alaska Constitution might bar the enforcement of a preference extended only to Natives, Congress broadened the preference to include all 'rural residents.'" *Id.* (citation omitted). Nonetheless, the principal purpose of Title VIII remained the economic and cultural survival of Alaska Natives. See 16 U.S.C. § 3111; see also 126 Cong. Rec. 29,278 (statement of Rep. Udall) ("[T]he primary beneficiaries of the subsistence title and the other provisions in the bill relating to subsistence management are the Alaska Native people."). Indeed, Title VIII declares that the "continuation of the opportunity for subsistence uses" is "essential to *Native* physical, economic, traditional, and cultural existence." 16 U.S.C. § 3111(1) (emphasis added); see also *id.* § 3111(4) (invoking "authority over Native affairs").

Congress included in Title VIII an offer to Alaska: The State could exercise delegated federal authority to manage subsistence hunting and fishing on federal public lands (in addition to exercising its own authority over state and private lands) if it enacted a law of general applicability containing the same rural subsistence priority. *Id.* § 3115(d). The Alaska legislature enacted such a law in 1986, but the law was short-lived, as the Alaska Supreme Court held that Alaska's Constitution does not permit a rural subsistence priority. *McDowell* v. *State* 785 P.2d 1, 1–2 (Alaska 1989).

In the wake of that decision, the State repeatedly requested reprieves, promising Congress that it could resolve the issue—and render unnecessary federal management of Title VIII's rural subsistence priority—through a state constitutional amendment. See *John* v. *United States*, No. A90-0484CV (HRH), 1994 WL 487830, at *4 (D. Alaska Mar. 30, 1994), *rev'd sub nom.*, *Katie John I*, 72 F.3d 698. But those promises proved hollow. Despite a series of congressional moratoria, guarantees of federal appropriations, and tireless advocacy by the Native community, the State never passed a state constitutional amendment. See 2 C.A. JSER 356–60.

So, under ANILCA, the Secretaries of Interior and Agriculture assumed responsibility for implementing Title VIII. The Secretaries issued regulations establishing the Federal Subsistence Board (the Board) "to administer[] the subsistence taking and uses of fish and wildlife on public lands." 43 C.F.R. § 51.10(a).[2]

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[2] The regulations provide that "State fish and game regulations apply to public lands and such laws are hereby adopted and made part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part." 43 C.F.R. § 51.14(a). At any time, Alaska may enact its own laws

3. After state-law obstacles hindered Alaska's ability to utilize Title VIII's pathway for unified state subsistence management, the State challenged the Board's regulation of subsistence uses under Title VIII in the *Katie John* cases. These challenges focused on the Board's authority to implement the rural subsistence priority to fish on "public lands." 16 U.S.C. § 3114.

Under ANILCA, "'public lands' means lands situated in Alaska which … are Federal lands." *Id.* § 3102(3). "The term 'Federal land,'" in turn, "means lands the title to which is in the United States." *Id.* § 3102(2). And "[t]he term 'land' means lands, waters, and interests therein." *Id.* § 3102(1).

The Secretaries initially construed "public lands" in Title VIII to exclude navigable waters. But a group of Alaska Natives, including Katie John, challenged the regulations, asserting that the "public lands" to which Title VIII extends includes *all* waters in Alaska subject to the federal navigational servitude, *i.e.*, virtually all of its salmon-bearing rivers. That suit was consolidated with Alaska's suit arguing that ANILCA did not authorize federal management of the rural subsistence priority on *any* waters in Alaska. Thereafter, the United States ceased defending the federal regulations and argued that navigable waters subject to federal reserved water rights are subject to federal subsistence management.

The district court agreed with Katie John, ruling that the "public lands" to which Title VIII's subsistence priority extends includes all navigable waters in Alaska. See *Katie John I*, 72 F.3d at 701. On appeal,

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implementing ANILCA's rural subsistence priority and petition the Secretaries to repeal the federal regulations. *Id.* § 51.14(d).

the Ninth Circuit rejected both Katie John's and Alaska's positions, instead holding that the United States' revised interpretation of "public lands"—which includes those waters within federal parks and refuges where the United States holds reserved water rights—was reasonable. *Id.* at 704. The Ninth Circuit held there could be "no doubt" that Congress intended the subsistence priority to apply on some navigable waters in Alaska, but not necessarily all navigable waters. *Id.* at 702. This Court denied Alaska's petition for certiorari. *Babbitt,* 517 U.S. at 1187.

After *Katie John I*, Congress paused federal implementation of the new proposed subsistence regulations on navigable waters via a succession of four appropriations Acts. For example, in one Act, Congress acknowledged (as *Katie John I* held) that the Secretary of the Interior is "required" to manage Title VIII's subsistence priority, which "applies to navigable waters in which the United States has reserved water rights." Pub. L. No. 105-83, § 316(b)(3)(B), 111 Stat. 5043, 5092 (1997). Congress nonetheless wanted Alaska to have another "opportunity to continue to manage" fish and wildlife on "all lands," and thus amended ANILCA to give Alaska a chance to adopt state laws compliant with Title VIII. *Id.* § 316(b)(3)(B), 111 Stat. 5092–93. But Alaska did not act, and the amendments lapsed, after which Congress appropriated $11 million for federal implementation of Title VIII. Pub. L. No. 105-277, 112 Stat. 2681, 2681-251–52, 2681-271 (1998).

4. Once the original *Katie John* suit was back before the district court, the Secretaries published an advance notice of proposed rulemaking revising the Title VIII regulations, 61 Fed. Reg. 15,014 (Apr. 4, 1996), followed by proposed regulations, 62 Fed. Reg. 66,216 (Dec. 17, 1997), and final regulations defining "public

lands" consistent with *Katie John I*. 64 Fed. Reg. 1,276, 1,287 (Jan. 8, 1999). The regulations applied *Katie John I* to conservation system units and national forests in Alaska. The district court entered final judgment after the regulations became effective.

Alaska appealed again, and the Ninth Circuit heard the appeal en banc. It "determined that the judgment rendered by the prior panel, and adopted by the district court, should not be disturbed or altered." *Katie John II*, 247 F.3d at 1033. Three members of the court would have extended Title VIII to *all* navigable waters, *id.* at 1034 (Tallman, J., concurring), while three others would have held that Title VIII does not apply to *any* navigable waters. *Id.* at 1044 (Kozinski, J., dissenting). One of the three dissenters expressed concern that Alaska "had two bites at the same apple," suggesting that its challenge should have been precluded because it "rais[ed] precisely the same issue … as [the Ninth Circuit] heard and determined [in *Katie John I*]." *Id.* at 1050–51 (statement of Rymer, J.). The majority simply affirmed *Katie John I.*

After meeting with Katie John, then-Governor Tony Knowles decided not to seek further review in this Court. See 2 C.A. JSER 538 ("We must stop a losing legal strategy that threatens to make a permanent divide among Alaskans. … Therefore, I cannot continue to oppose in court what I know in my heart to be right.") (internal quotations omitted).

5. Years later, Alaska again changed its mind and decided to challenge the 1999 regulations anew, this time arguing that too many waters had been included. See *Katie John III*, 720 F.3d at 1223–24. The district court rejected this challenge, and the Ninth Circuit affirmed in *Katie John III*, holding that *Katie John I* was "controlling law." *Id.* at 1226.

Alaska petitioned this Court, asking it to review not only the regulations at issue in *Katie John III*, but also the holdings in *Katie John I* and *Katie John II*—namely, that Title VIII applies to navigable waters on federal lands where the United States holds reserved water rights. This Court denied the petition. *Jewell*, 572 U.S. at 1042. At that point (at the latest), the judgment in *Katie John* became final—and entitled to the preclusive effect of all final judgments.

6. One additional round of litigation is relevant here: *Sturgeon*. The question at issue there was whether the National Park Service could prohibit John Sturgeon from traveling by hovercraft on a river "the Federal Government does not own" in the Yukon-Charley Rivers National Preserve. *Sturgeon*, 587 U.S. at 32. Alaska filed an amicus brief in support of Sturgeon. Of particular relevance, Alaska argued that this Court should not "tie[] together" "the *Katie John* and *Sturgeon* decisions." Alaska Amicus, at 30. As Alaska then put it, "the *Katie John* decisions arose in the distinct subsistence context out of a desire to effectuate Congress's clear intention that Title VIII of ANILCA include a meaningful rural subsistence preference." *Id.* at 5 (citation omitted).

Alaska thus argued that the Court could and should rule for Sturgeon without upsetting *Katie John*:

> The *Katie John* decisions are not at issue in this appeal; the Question Presented concerns only Mr. Sturgeon's non-subsistence use of the Nation River, which does not fall within or implicate Title VIII at all. Neither party has asked this Court to overrule or reconsider *Katie John* in connection with Mr. Sturgeon's case. Thus, this Court need not directly address the prior circuit holdings in order to resolve this appeal.

Id. at 29. Alaska sang the same tune at oral argument, where it participated as an amicus. See Tr. of Oral Arg. at 28:2–5, *Sturgeon*, 587 U.S. 28 (No. 17-949) (arguing that "giving effect to Congress's intent … require[s] preserving the rural subsistence priority in Title 8").

This Court took Alaska at its word. In holding that "Sturgeon can again rev up his hovercraft in search of moose," *Sturgeon*, 587 U.S. at 32, the Court went out of its way to clarify that "ANILCA's subsistence-fishing provisions … are not at issue in this case," and that the Court was "not disturb[ing] the Ninth Circuit's holdings [in *Katie John*] that the Park Service may regulate subsistence fishing on navigable waters." *Id.* at n.2 (citing, *inter alia*, Alaska Amicus, at 29–35).

Factual and Procedural Background

1. The Kuskokwim River runs more than 700 miles through southwest Alaska, into the Bering Sea. Roughly the last 180 miles run through the Yukon Delta National Wildlife Refuge, the ancestral home of many Native communities. See U.S. Fish & Wildlife Serv., *Yukon Delta National Wildlife Refuge*, https://www.fws.gov/refuge/yukon-delta/about-us (accessed Dec. 7, 2025); Pet.App.84a–85a.[3] The River supports five species of Pacific salmon. Residents of villages along the River and its tributaries are predominantly Alaska Native, specifically Yup'ik and Athabaskan people, who are highly dependent on salmon as a food source; indeed, the Yup'ik word for fish, "neqa," is the same as the word used for food. Besides serving as a critical food source, the subsistence

[3] The vast majority of the population along the Kuskokwim River resides within the Refuge.

harvest of salmon is also a central part of Yup'ik and Athabaskan culture and identity.

For decades, the United States and Alaska cooperated in managing the subsistence salmon fishery on the River. In 2021, however, Alaska manufactured a conflict. After the Board concluded it was necessary to reduce harvests to increase the number of fish reaching their spawning grounds, the Board issued an emergency special action closing fishing in the Refuge to non-subsistence uses beginning in June 2021. Alaska then issued its own emergency closure order allowing subsistence fishing by *all* Alaskans, not just rural Alaskans. Alaska's orders undisputedly conflicted with the terms of the federal closures and the rural subsistence priority. A similar pattern of conflicting orders occurred in May 2022. Pet.App.22a.

2. After attempts at informal resolution failed, the United States filed suit in May 2022, alleging that Alaska's orders conflicted with the federal orders under ANILCA Title VIII and were therefore preempted.

As relevant here, Alaska argued that the United States has no authority to regulate subsistence fishing on the Kuskokwim River in the Refuge because, contra *Katie John*, those navigable waters are not "public lands" for purposes of Title VIII. Several Alaska Native entities intervened to argue (among other things) that *Katie John* was correct and foreclosed the State's arguments and that Alaska's arguments were judicially estopped and precluded in all events.

The district court rejected Alaska's arguments across the board and granted summary judgment to the United States and intervenors. The court accordingly enjoined implementation of Alaska's orders and similar future actions. Pet.App.23a.

3. Alaska appealed. At the Ninth Circuit, the United States argued, *inter alia*, that preclusion bars Alaska from relitigating the *Katie John* issue it had already litigated to finality and that *Katie John* is both good law and correct. Intervenors echoed those arguments and asserted additional grounds for affirmance. In addition, the Kuskokwim River Inter-Tribal Fish Commission argued that Alaska's claims were barred by judicial estoppel based on Alaska's representations, including to this Court, in *Sturgeon*. See Br. of Kuskokwim River Inter-Tribal Fish Comm'n at 40, *United States* v. *Alaska*, 151 F.4th 1124 (9th Cir. Oct. 25, 2024).

The Ninth Circuit affirmed, holding that *Sturgeon* did not conflict with, let alone overrule, *Katie John*. The Ninth Circuit also held Alaska's new reading of ANILCA cannot be squared with Title VIII's text, with its express purpose, or with Congress's ratification of *Katie John*. Pet.App.24a–40a. Because it ruled against Alaska's newfound interpretation, the court of appeals did not need to reach or resolve whether Alaska's claims were precluded or judicially estopped.

REASONS FOR DENYING THE PETITION

I. THE DECISION BELOW DOES NOT CREATE A CONFLICT WITH ANY DECISION OF THIS COURT OR ANY OTHER

The Ninth Circuit's holding that *Sturgeon* did not overrule *Katie John* does not conflict with any decision of this Court, including *Sturgeon* itself. That is readily apparent from this Court's statement in *Sturgeon* that "ANILCA's subsistence-fishing provisions … are not at issue in this case, and we therefore do not disturb the Ninth Circuit's holdings [in *Katie John*] that the

Park Service may regulate subsistence fishing on navigable waters." 587 U.S. at 45 n.2.

That statement was unequivocal, and it means what it says. After all, numerous briefs in *Sturgeon*—Alaska's foremost among them—pointed out that the *Katie John* Trilogy involves Title VIII of ANILCA and its unique, express protection of subsistence fishing and hunting, whereas *Sturgeon* involves Title I.[4] Alaska itself argued that *Katie John*'s holding was important to the welfare of rural Alaskans. *Infra* at 27–28. Alaska also told this Court that it should *not* overturn *Katie John* when interpreting the meaning of the phrase "public lands" under a different title of ANILCA. Simply put, this Court's clear statement in *Sturgeon* that it "d[id] not disturb" *Katie John* was not code for "*Sturgeon* not only disturbs *Katie John*, but overrules it."

Sturgeon aside, there is no other conflict about the meaning of the *Katie John* Trilogy or the scope of ANILCA Title VIII. That is unsurprising, as ANILCA is a singular statutory scheme with unique purposes and provisions applicable to Alaska alone. See 16 U.S.C. § 3101. Indeed, this Court has already explained that the phrase "public lands" in Title VIII

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[4] In *Sturgeon* (unlike here), the State of Idaho acknowledged that "the subsistence regulations that effectuate Title VIII's subsistence priority[are] an issue unique to the State of Alaska[,]" and therefore took no position on the issue. Br. of Amici Curiae States in Supp. Pet. at 14 n.4, *Sturgeon*, 587 U.S. 28 (No. 17-949), 2018 WL 3869590 at *14 n.4. In now asserting otherwise, Amici States ignore that, outside Alaska, the federal government already "has broad authority … to administer both lands and waters within all system units in the country." *Sturgeon*, 587 U.S. at 38 (citing, *inter alia*, 54 U.S.C. § 100751). Interpreting a single title of an Alaska-specific statute cannot possibly have the implications they (and Alaska) allege.

does not, "in and of itself, have a precise meaning, without reference to a definitional section or its context in a statute." *Amoco Prod. Co.* v. *Village of Gambell*, 480 U.S. 531, 548 n.15 (1987) (citation omitted). And, again, *Katie John* focused on the unique context of Title VIII—with its express, overriding intent to protect subsistence hunting and fishing—in defining "public lands" to include some navigable waters under Title VIII.

In contrast, *Sturgeon* interpreted Section 102 (part of Title I) in the context of its neighboring provision, Section 103(c) (also part of Title I), which "exempt[s] non-public lands, including waters, from the Park Service's ordinary regulatory authority." 587 U.S. at 48. And neither the language of Section 103(c) nor *Sturgeon*, which dealt with the discrete and distinct context of general Park Service regulations issued under the Service's general Organic Act authority,[5] undermines Congress's intent as expressed in a different title of ANILCA. As Alaska itself explained in *Sturgeon*, "[t]his Court has stressed that 'the presumption of consistent usage readily yields to context, and a statutory term—even one defined in the statute—may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.'" Alaska Amicus, at 34 (quoting *Util. Air Regul. Grp.* v. *EPA*, 573 U.S. 302, 320 (2014)).

There is thus no conflict warranting this Court's intervention. The State is plainly wrong that this case has national import. See Pet.24–25. While other laws

[5] As this Court noted in *Sturgeon*, outside Alaska, "the Secretary, acting through the Director of the Park Service, has broad authority under the National Park Service Organic Act … to administer both lands and waters within all system units in the country." 587 U.S. at 38 (citation omitted).

use the phrase "lands, waters and interests therein," none uses it as ANILCA does—to define the scope of a federally protected activity, such as subsistence hunting and fishing. In the decades since *Katie John*, the cases have rarely been cited—and *no* court has cited them in interpreting the term "public lands" outside of ANILCA. That should be expected, since ANILCA's phrase "lands, waters, and interests therein" is not used in these other statutes to define "public lands." Any interpretation of the definition of "public lands" for purposes of the subsistence provisions in Title VIII is thus irrelevant to any other statute or state.

Working hard to locate a conflict over Title VIII, Alaska cites *Totemoff* v. *State*, 905 P.2d 954 (Alaska 1995). That decades-old case involved a criminal prosecution of a hunter for spotlighting deer on federal land while hunting in violation of state law. *Id.* at 957. The Alaska Supreme Court found no conflict between the state regulation and ANILCA or any federal regulation and explained that ANILCA did not protect hunting *methods*. *Id.* at 958–61. That sufficed to resolve the case—but the court nonetheless went on to say that, *if* there *had* been such a conflict, the State could have enforced its regulation because ANILCA does not apply to the navigable waters from which the hunter shined his spotlight. *Id*. at 961. On any definition, that statement was dicta. Particularly in light of the torrent of jurisprudential water under the bridge since its issuance, *Totemoff*'s dictum in a case that did not involve fishing rights does not create the kind of "conflict" this Court should use its limited resources to resolve.[6]

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[6] Indeed, in *Totemoff*, the Alaska Supreme Court did not undertake an analysis of Title VIII to determine the waters on which Congress intended its rural subsistence fishing priority to apply.

II. *KATIE JOHN* HAS BEEN THE LAW FOR DECADES; IT CREATES NEITHER THEORETICAL NOR PRACTICAL ISSUES THAT REQUIRE THIS COURT'S ATTENTION

Alaska's primary argument in support of this Court's review is that *Katie John* supposedly "strips the State of Alaska of its sovereign right to regulate fishing on navigable waters." Pet.19. This is pure hyperbole.

First, Alaska conceded below that Congress has the power to enact a rural subsistence priority to fish in navigable waters running through federal lands. See Pet.App.33a.n.13. Rightly so. See, *e.g.*, *Utah Div. of State Lands* v. *United States*, 482 U.S. 193, 202 (1987) ("[E]ven if the land under navigable water passes to the State, the Federal Government may still control, develop, and use the waters for its own purposes.") (citation omitted). This case thus presents no question about Congress's power or state sovereignty, but only the narrow statutory-interpretation question of whether Title VIII of ANILCA actually does what Alaska concedes Congress has the power to do—*i.e.*, whether it applies the statutory rural subsistence priority to the navigable waters running through federal lands. Alaska's overstated "policy concerns," Pet.36, are beside the point.

Moreover, Alaska's past statements to this Court belie its current claim that *Katie John* has harmed its sovereign interests. In its *Sturgeon* brief, Alaska told

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That court's musings about whether there might be federal jurisdiction over a hunter targeting deer on federally owned land from a boat in navigable waters *if* state and federal law had conflicted is irrelevant to the narrow statutory-interpretation question before this Court.

this Court not only that *Katie John* was correctly decided, but that *Katie John* served important interests in Alaska. *Supra* at 12–13. Alaska was right the first time. Title VIII respects, rather than undermines, Alaska's sovereignty.

Start with the statutory text. Title VIII addresses rural subsistence uses, and its central objective is "to protect and provide the opportunity for continued subsistence uses on the public lands by Native and non-Native rural residents." 16 U.S.C. § 3111(4). To that end, Title VIII mandates that "the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes." *Id.* § 3114. But Congress also recognized the State's traditional authority over fish and wildlife within its borders—including with respect to subsistence activities. ANILCA thus accommodates Alaska by giving the State an opportunity to "enact[] and implement[] laws of general applicability which are consistent with" Title VIII. *Id.* § 3115(d); see also *id.* § 3202(a) ("Nothing in this Act is intended to enlarge or diminish the responsibility and authority of the State of Alaska for management of fish and wildlife on the public lands *except as may be provided in [Title VIII].*") (emphasis added).[7]

Hence, by 1982, Alaska had implemented its own subsistence program under Title VIII. And it operated a version of that state-run program until the rural priority was invalidated by the Alaska Supreme Court in

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[7] That Congress carefully and expressly struck this balance undercuts amici's argument that a further clear statement is required. See, *e.g.*, Br. of Amicus Curiae Ass'n Fish & Wildlife Agencies at 19, *Alaska* v. *United States*, No. 25-320 (U.S. Oct. 17, 2025).

McDowell in 1989. Only when the state legislature repeatedly failed to address the court's decision—after numerous congressional enactments paused federal implementation of *Katie John* to allow Alaska the opportunity to do so, see *supra* at 10—did the federal government assume responsibility for Title VIII's subsistence fishing mandate. Even then, the federal regulations provide that at any time Alaska may enact its own laws implementing ANILCA's rural subsistence priority and petition the federal government to repeal its regime. 43 C.F.R. § 51.14(d).

Furthermore, under ANILCA, state laws and regulations govern *all* aspects of non-subsistence and subsistence hunting and fishing in Alaska outside of "public lands" defined by Title VIII, and they govern subsistence hunting and fishing on public lands except in the few instances where they conflict with federal law and regulations. See, *e.g.*, *id.* § 51.25(*l*) ("Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from fishing, hunting, or trapping on public lands in an area may fish, hunt, or trap on public lands *in accordance with the appropriate State regulations*.") (emphasis added).[8] Thus, the federal regulations expressly provide that *Alaska's* laws and regulations operate in all areas to which the subsistence priority extends—except in the limited circumstances of an express federal determination to preempt state regulations when

[8] See also U.S. Dep't of the Interior, *Environmental Assessment, Modification of the Federal Subsistence Fisheries Management Program*, ch. II-2 (June 2, 1997), https://www.doi.gov/sites/doi.gov/files/migrated/subsistence/library/ea/upload/EAModFSFMP.PDF ("As a starting point, the proposed Federal regulations pertaining to the seasons, harvest limits, methods, and means … are based on the existing State regulations with minor modifications.").

necessary to protect subsistence resources. See, *e.g.*, *id.* § 51.14(a). And Alaska retains power to change its laws to unify subsistence management in the State on all lands and waters under the cooperative federalism scheme Congress enacted in ANILCA. This cannot be fairly characterized as a significant intrusion on Alaska's sovereignty.

As a practical matter, moreover, conflicts between federal regulation of subsistence fishing and state regulation have been few in the decades since the federal implementation of Title VIII. In the first fifteen years of federal regulation, there was only one real "conflict": The State and the U.S. Fish and Wildlife Service (FWS) had agreed on closures and limits on subsistence uses on the Kuskokwim for nine days in June and July 2011, but disputed closures on three additional days. See Alice M. Bailey & Holly C. Carroll, *Alaska Dep't of Fish & Game, Fishery Management Report, No. 12-36, Activities of the Kuskokwim River Salmon Management Working Group, 2011*, at 6–7, 11–12 (Oct. 2012), http://www.adfg.alaska.gov/fedaidpdfs/FMR12-36.pdf. FWS coordinates closely with the State, and no federal closure has ever been done without state consultation. And the current administration has already initiated a process to consider amending the current regulations governing subsistence hunting and fishing on federal lands to further federal-state cooperation for those few disputes.[9] Alaska intentionally manufactured the current, narrow dispute by issuing conflicting orders to the federal closure orders during two brief periods in 2021 and

[9] See *Programmatic Review for RAC Packets*, U.S. Dep't of Interior (Sept. 2025), https://www.doi.gov/sites/default/files/documents/2025-09/programmatic-reviewfor-rac-packets508.pdf.

2022 to create a new vehicle to once again argue that *Katie John* was not good law. *Supra* at 14.

In any event, in 1980 in ANILCA, Congress established a federal system to govern subsistence fishing and hunting on public lands, while respecting the State's authority to govern hunting and fishing on non-public lands, as well as non-subsistence hunting and fishing on public lands except where specifically preempted by federal regulation. As a matter of law, then, subsistence activities are already subject to two management regimes, depending on whether they occur on or off public lands. *Katie John* did not create that situation, Congress did.[10] Like all cooperative federalism, it can at times be messy, but Alaska has not suffered, as its prior filings in this Court reflect.

Last, Alaska cites the Equal Footing doctrine in insisting that *Katie John* eviscerates its sovereignty. But Alaska's admission to the Union did not divest Congress of its plenary control over inland navigable waterways. See *Arizona* v. *California*, 373 U.S. 546, 597–98 (1963) (limiting the equal footing doctrine to the beds of navigable waterways, not the waters). This holds especially true for waters *on federal lands*, which are the only waters at issue here. See *Kleppe* v. *New Mexico*, 426 U.S. 529, 538–41 (1976) (holding that the Property Clause provides "congressional power to regulate conduct on [p]rivate land that af-

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[10] Indeed, 26 rivers in Alaska have been specifically reserved under the Wild and Scenic Rivers Act "to be administered by the Secretary of the Interior." See 16 U.S.C. § 1274(25)–(50). Congress has repeatedly exercised its power to regulate fish and wildlife in navigable waters. See, *e.g.*, Fur Seal Act of 1966, 16 U.S.C. §§ 1151–1159; Endangered Species Act of 1973, 16 U.S.C. §§ 1531–1544; Marine Mammal Protection Act, 16 U.S.C. §§ 1361–1362, 1371–1393, 1401–1407.

fects the public lands," including "the power to regulate and protect the wildlife living there") (footnote omitted).

In essence, Alaska's argument is that any ruling that touches on Alaska's power to regulate fishing is worthy of this Court's review. That cannot be the standard, as evidenced by this Court's prior denials in *Katie John I* and *Katie John III*. The principal difference with this latest attempt is that the various interested parties have adjusted their settled expectations and ordered their affairs against the backdrop of that settled law and that Congress has acted based on that statutory interpretation. There is no basis to unsettle at this late juncture what has long been settled. Title VIII of ANILCA is a modest exercise of Congress's undisputed authority to regulate hunting and fishing on public lands in Alaska and does not infringe on Alaska's sovereign authority.

III. ALASKA'S CLAIMS ARE PRECLUDED AND ESTOPPED IN WAYS THAT CREATE SERIOUS VEHICLE PROBLEMS

In the *Katie John* Trilogy, Alaska litigated and lost the issue presented here, with the Ninth Circuit twice holding that ANILCA's subsistence priority applies to navigable waters in which the United States has reserved rights. This Court twice denied Alaska's petitions for certiorari. Preclusion is therefore triggered. Indeed, a quarter-century ago in *Katie John II*, Judge Rymer expressed concern that it was already too late: Alaska already "had two bites at the same apple" then, because it was "raising precisely the same issue on this appeal as we heard and determined on the last one." 247 F.3d at 1050, 1051 (statement of Rymer, J.). This Court should not countenance Alaska's attempt to get yet another bite here, especially when the Court

could not rule in Alaska's favor without wrestling with this factbound and decidedly un-certworthy issue.

The doctrine of "issue preclusion bars successive litigation of an issue of fact or law that is actually litigated and determined by a valid and final judgment and is essential to the judgment." *Bobby* v. *Bies*, 556 U.S. 825, 834 (2009) (internal citation, quotations, and ellipses omitted). Claim preclusion provides that "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Allen* v. *McCurry*, 449 U.S. 90, 94 (1980) (citation omitted). "By precluding parties from contesting matters they have had a full and fair opportunity to litigate," issue and claim preclusion "protect against the expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibility of inconsistent decisions." *Taylor* v. *Sturgell*, 553 U.S. 880, 892 (2008) (internal citation, quotations, and brackets omitted).

Those doctrines squarely apply here. In its question presented, Alaska seeks to relitigate issues and claims it had a full and fair opportunity to litigate against the United States and other parties in *Katie John*. Alaska's opportunity to seek review of those decisions is now long past. Its current identical claim is precluded. Indeed, the issue here is particularly appropriate for preclusion. It is narrow and confined to a specific, recurring dispute between Alaska and the United States about the authority to administer Title VIII on navigable waters in Alaska—a dispute the courts and Congress have considered numerous times and resolved unanimously against the State.

At minimum, the presence of substantial issue- and claim-preclusion concerns makes this case a particularly poor candidate for this Court's review. There is no way to rule in Alaska's favor without confronting and resolving questions of claim and issue preclusion that have no significance beyond this dispute.

The vehicle problems do not end there, as Alaska's claims are *also* barred by the separate doctrine of judicial estoppel. That doctrine "protect[s] the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire* v. *Maine*, 532 U.S. 742, 749–50 (2001) (internal citations and quotations omitted). Alaska was a party in multiple rounds in the *Sturgeon* litigation, including in the Ninth Circuit, and it presented oral argument as an amicus in this Court urging this Court to leave the *Katie John* Trilogy undisturbed. Alaska's efforts were successful. This Court specifically cited the State's brief in concluding that its decision did *not* implicate *Katie John*. See *Sturgeon*, 598 U.S. at 45 n.2 (citing Alaska Amicus as "arguing that this case does not implicate [the *Katie John*] decisions"). In other words, Alaska prevailed in *Sturgeon* based in part on its arguments that the outcome there would *not* affect *Katie John* which protected important interests of rural Alaskans. See *supra* at 12–13. It should therefore be estopped from its attempt to pivot away from the position it previously took in this Court and others. Once again, at the very least, these concerns make this case a poor vehicle for this Court's review of the question presented.

IV. *KATIE JOHN* IS CORRECT

The final reason to leave the settled law of *Katie John* undisturbed is that those decisions are correct

and adopted the only sensible view of a provision targeted to subsistence *fishing* rights. Indeed, Alaska itself previously recognized as much. In its *Sturgeon* brief, Alaska argued that *Katie John*'s holding—that Title VIII's subsistence fishing priority extends to navigable waters—is the only result that "effectuate[s] Congress's intent." Alaska Amicus, at 33. That view remains correct. ANILCA set aside millions of acres to provide "the opportunity for rural residents engaged in a subsistence way of life to continue to do so," 16 U.S.C. § 3101(c), and it specifically called out the goal of preserving "fishing" on "freeflowing rivers," *i.e.*, navigable waters. *Id.* § 3101(b). That was not a slip of the pen. Quite the opposite: Underscoring the centrality of subsistence fishing to Title VIII (and Alaska Natives' traditional way of life), Title VIII discusses "fish" throughout, mentioning "fish" or "fishing" *49 times*.

This focus on fishing confirms that Title VIII's reference to "public lands" can only be understood as including navigable waters. After all, fish taken for subsistence purposes—including salmon, the most important subsistence food—are harvested (almost exclusively) in such waters. Pet.App.31a; see Pet.App.83a-84a. Plainly, excluding navigable waters from a provision targeting subsistence fishing would be nonsensical. Indeed, a 2020 report calculated that subsistence fisheries provide 55% of the wild foods harvested by rural residents, with salmon—which are harvested predominantly in navigable waters—comprising the largest portion of the total harvest at 32.3%. 2 C.A. JSER 440. Title VIII's subsistence *fishing* protection therefore would be all but worthless if it did not extend to navigable waters.

Lest there be any doubt, look to what Alaska itself told this Court in *Sturgeon*: The "subsistence priority"

Congress created in Title VIII and the Ninth Circuit protected in *Katie John* is "essential to" Native "physical, economic, [and] traditional" existence, because many Alaskans have "no realistic alternative to [it]." Alaska Amicus, at 31. Rather than enact a self-defeating statute, Congress expressly provided protection for subsistence fishing that "has traditionally taken place in navigable waters." *Katie John I*, 72 F.3d at 702; see also *Native Vill. of Quinhagak v. United States*, 35 F.3d 388, 393–94, 393 n.4 (9th Cir. 1994).

Despite all that, the State now argues that it was wrong before, and that Congress actually intended to deprive Alaska Natives and other rural Alaskans of any real ability to engage in subsistence fishing in Alaska. In doing so, Alaska emphasizes that ANILCA's definition of "public lands" applies to multiple Titles, including Title VIII. But that does not mean the term can be applied without reference to the overall purpose of Title VIII (or any other title). Indeed, as *Alaska itself* previously explained:

> Title VIII stands apart from the rest of ANILCA with its own findings, 16 U.S.C. § 3111, its own statement of policy, 16 U.S.C. § 3112, and—unlike any other part of the legislation—specific invocations of congressional authority under the Commerce Clause, the Property Clause, and Congress's "constitutional authority over Native affairs." 16 U.S.C. § 3111(4).

Alaska Amicus, at 30. The whole point of Title VIII is for "there [to] be an enforceable subsistence priority." *Id.* at 31. But the subsistence fishing priority would be illusory if it did not extend to navigable waters.

As Alaska said in *Sturgeon*: "This case presents a salient example of a circumstance where a complex statute's use of a term in different contexts is properly

interpreted differently." *Id.* at 34; see, *e.g.*, *Envtl. Def.* v. *Duke Energy Corp.*, 549 U.S. 561, 575–76 (2007) (Nothing requires "that the same defined term in different provisions of the same statute must be interpreted identically. Context counts.") (internal citation and quotations omitted). Indeed, as Alaska explained, "ANILCA is a long, complex, and multifaceted statute," and "[t]he context of Title VIII and remainder of ANILCA are different in material and significant ways," "explicitly contemplat[ing] federal regulation if necessary to ensure that rural Alaska residents can engage in traditional and customary subsistence fishing activities." Alaska Amicus, at 30 (citation omitted). Yet those customary subsistence activities would be entirely cut off if Title VIII does not encompass navigable waters. It is thus wrong to treat Title VIII (*Katie John*) and Title I (*Sturgeon*) as joined at the hip. See, *e.g.*, *id.* (Alaska previously arguing to this Court that "the *Katie John* and *Sturgeon* decisions [should not] be tied together").[11]

If that were not enough, Congress has expressly ratified the scope of federal regulation under Title VIII. As explained *supra*, at 10, Congress responded to

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[11] In fact, doing so creates serious textual anomalies. For example, Title VIII expressly permits the "appropriate use for subsistence purposes of … motorboats" on "public lands." 16 U.S.C. § 3121(b). That makes sense; "rivers function as the roads of Alaska, to an extent unknown anyplace else in the country." *Sturgeon*, 587 U.S. at 57. But, by definition, non-navigable waters cannot be navigated by motorboat; waters that are "navigable in fact" are navigable waters. *United States* v. *Appalachian Elec. Power Co.*, 311 U.S. 377, 406 n.21 (1940) (quoting *The Daniel Ball*, 77 U.S. 557, 563 (1871)) (internal quotations omitted). So, if Alaska's new position is right and Title VIII's subsistence priority were limited to non-navigable waters, then Title VIII's express guarantee of motorboat use for subsistence purposes would be an empty promise.

Katie John I by pausing federal regulation and granting Alaska several opportunities to enact laws compliant with Title VIII. After multiple years and congressionally enacted extensions, Congress allowed federal regulation to proceed. The legislation authorizing the extensions rests on the express understanding that the proposed Title VIII regulations "applies to navigable waters in which the United States has reserved water rights as identified by the Secretary of the Interior," citing *Katie John I* by name. Pub. L. No. 105-83, § 316(b)(3)(B), 111 Stat. at 1592. Plainly, Congress examined *Katie John I* and the proposed federal regulations, and decided that the regulations should take effect, choosing not to abrogate *Katie John* and instead to make an appropriation to allow *Katie John*'s holding to be implemented. See Pet.App.11a–15a, 33a–38a. Had Congress wished to reject the Ninth Circuit's conclusion, it easily could have done so. Its more measured approach—giving the State a few last chances to amend its constitution before directing the Secretaries to implement *Katie John I*—is "convincing support for the conclusion that Congress accepted and ratified" that decision. *Tex. Dep't of Hous. & Cmty. Affs.* v. *Inclusive Cmtys. Project*, 576 U.S. 519, 536 (2015).[12]

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[12] Against that backdrop, Alaska's reliance on the "clear statement" doctrine is puzzling. As the Ninth Circuit explained in *Katie John I*, "Congress spoke to the precise question of whether *some* navigable waters may be public lands." 72 F.3d at 702 (emphasis in original). Because Title VIII "clearly indicate[s] that subsistence uses include subsistence fishing," and because "subsistence fishing has traditionally taken place in navigable waters," there is "no doubt that Congress intended that public lands include at least some navigable waters." *Id.* (footnote omitted). Title VIII also clearly prescribes the requirements Alaska must satisfy to displace federal subsistence management. Plainly, if

As a last-ditch effort, Alaska asserts that Title VIII cannot mean what it says (and what *Katie John* held it to say) because the Tenth Amendment supposedly secures "a state's right to regulate its navigable waters." Pet.21; see also Pet.18, 25–30. But this (re)framing of the issues comes far too late: The State conceded at the Ninth Circuit *in this case* that Congress has the power to enact a rural subsistence priority to fish in navigable waters running through federal parks, refuges, and forests. See Pet.App.33a n.13 ("Alaska does not dispute that Congress has the power to regulate fishing on navigable waters where Alaska holds title to the submerged lands."); Reply Br. of Alaska at 67-68, *Alaska*, 151 F.4th 1124 (9th Cir. Dec. 16, 2024).

That concession was well-advised, as Congress has ample power to secure subsistence fishing rights on navigable waters. The concession also effectively ends any debate about the merits here. Alaska does not (and could not) dispute that, in enacting ANILCA and creating millions of acres of new federal parks and wildlife refuges in Alaska, Congress created a subsistence priority for rural Alaskans to fish on federal public lands.[13] And that subsistence fishing priority would be meaningless unless it included the waters that provide the only places where subsistence fishing—particularly salmon fishing—is actually viable. In short, Alaska "fail[s] to persuasively explain how its interpretation … can be harmonized with Title

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the State fails to satisfy those conditions, Congress required federal subsistence management on public lands.

[13] To be sure, Alaska insists that its "all Alaskans" subsistence regime is better than its federal counterpart. See Pet.23. While that is plainly wrong, it is ultimately beside the point, as Alaska concedes that Congress has enacted a rural subsistence priority to fish that is different than that found in Alaska law.

VIII's provisions that establish a rural subsistence priority to protect subsistence fishing as traditionally practiced." Pet.App.32a.

In the end, *Katie John* construed Title VIII in the only way that makes sense given Congress's express purposes. But even if Alaska thinks it has the better construction as an original matter, we are long past drawing on a blank slate. Alaska itself has been on both sides of this issue—having unsuccessfully advocated its current view and having successfully advocated the opposite. That creates serious issues of res judicata and estoppel. But more to the point, the citizens of Alaska have ordered their affairs against the backdrop of the *Katie John* Trilogy for more than a quarter-century since this Court first denied certiorari on this issue. There is simply no adequate basis to upset those settled expectations at this late stage.

CONCLUSION

For the foregoing reasons, the petition should be denied.

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